

CHAPTER 3

ACCESSIBILITY

The goal of this chapter is to provide guidance to county elections officials regarding accessibility requirements for election-related activities.

Background: State and Federal Law

In 1968, the California Legislature enacted the California Disabled Persons Act, which declared that the physically disabled are entitled to the same right as the able-bodied to full and free use of streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. (Civil Code, § 54, et seq.) The Act also declared that disabled persons are entitled to full and equal access, as are other members of the general public, to accommodations, advantages, facilities, and privileges of hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited. (Civil Code, § 54.1.) In 1979, the California Legislature enacted what is now numbered as Elections Code section 12280, which specifically requires polling places to be accessible to voters with disabilities.

In 1984, the United States Congress enacted the Voting Accessibility for the Elderly and Handicapped Act. (42 U.S.C. §1973ee, et seq.) The act specifically requires polling places for federal elections to be accessible to disabled and elderly voters. (42 U.S.C. §1973ee-1.) Finally, Congress enacted the Americans with Disabilities Act in 1990. (42 U.S.C. 12101, et seq.) Although comprehensive in its regulation of the treatment of disabled persons, the act specifically prohibits a public entity from discriminating against a qualified individual with a disability or excluding such a person from participating in services, programs, or activities of that entity. (42 U.S.C. §12132.)

Accessible Voting System Requirements

An important aspect of HAVA is to ensure voting accessibility to voters with disabilities, including the blind and visually impaired. Section 301(a) of HAVA requires each voting system used in an election for federal office to meet certain requirements. Section 301(a)(3)(A) provides that the voting system shall "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." In addition, Section 301(a)(3)(B) provides that States may satisfy this requirement "through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place."

Section 301(d) of HAVA requires each state and jurisdiction to comply with these accessibility requirements on and after January 1, 2006. However, all voting systems purchased with funds provided by HAVA after January 1, 2007, must be accessible to voters with disabilities.

In this regard, the responsibilities of county elections officials include providing at least one disabled-accessible voting machine per polling place to ensure that persons with disabilities may vote privately and independently. For the visually impaired, this means that the voting machine must have an audio capability so that the voter can hear the ballot information. For this purpose, a county elections official may utilize a direct recording electronic voting system or a ballot marking device that includes an audio interface. Any voting system used in this state must first be certified by the Secretary of State after being subject to vigorous testing.

Although an accessible voter-verified paper audit trail is not required by HAVA, California law requires that each direct recording electronic voting system contain this functionality. (Elec. Code, § 19250.) The voter-verified paper audit trail must be accessible to disabled persons, in that the information must be able to be conveyed to voters via an audio component.

Alternative Language Access

HAVA requires a voting system to provide alternative language accessibility pursuant to the requirements of the Voting Rights Act of 1965. (HAVA Section 301(a)(4).) The Voting Rights Act of 1965 requires that bilingual voting materials – including registration notices, voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots – must be provided to voters in covered states or political subdivisions obligated to meet the requirements of the Act. See Chapter 4 for additional information concerning alternative language requirements.

Polling Place Accessibility Requirements – State Law

The California Elections Code requires that in selecting polling places, an elections official must undertake necessary measures to ensure that polling places are accessible to the physically handicapped. (Elec. Code, § 12280.) California law also provides for “curbside voting”: if a polling place is not accessible, the precinct board member must take a regular ballot to the person with disabilities outside the polling place, and then return the voted ballot to the polling place. If it is impractical for a voter with disabilities to vote a regular ballot outside the polling place, then the voter should be provided with an absentee ballot, which should be voted and returned in the same manner as the regular ballot. (Elec. Code, § 14282(c).)

To facilitate compliance with the requirements of both state and federal law, the Secretary of State has developed a Polling Place Accessibility Checklist to be used in evaluating California polling places for access by voters with disabilities. The accessibility standards used in this survey comply with Title 24 of the California Code of Regulations as well as the Americans with Disabilities Act Accessibility Guidelines. The survey focuses on evaluating areas of a facility to be used as a polling place to ensure that all voters, including those with disabilities, will be able to vote. These include 1) parking for voters; 2) a drop-off, public transportation stop, or loading area; 3) the entrance to the polling place; and 4) the pedestrian routes, including sidewalks,

hallways, ramps, elevators, and lifts (both exterior and interior), that voters use. The checklist may be accessed on the Secretary of State's website at http://www.ss.ca.gov/elections/final_ppas_supp_0317.pdf.

In addition, a disabled voter may also receive assistance from another individual in marking his or her ballot. Elections Code section 14282(a) provides that "When a voter declares under oath, administered by any member of the precinct board at the time the voter appears at the polling place to vote, that the voter is then unable to mark a ballot, the voter shall receive the assistance of not more than two persons selected by the voter, other than the voter's employer, an agent of the voter's employer, or an officer or agent of the union of which the voter is a member." The precinct officers are required to keep a list of the voters who have been assisted in marking their ballots, and to return the list to the elections official to be preserved with other election materials and records. (Elec. Code, § 14283.)

Finally, the Secretary of State must also ensure that blind and visually impaired voters are provided with access that is equivalent to that provided to sighted individuals, including the ability to cast and verify votes by both visual and nonvisual means. (Elec. Code, § 19227(a).) There must be at least one voting unit at each polling place that provides access to blind or visually impaired voters. (Elec. Code, § 19227(b).)

Other Resources

ADA Checklist for Polling Places

<http://www.usdoj.gov/crt/ada/votingck.htm>

Secretary of State's Voter Complaint Form:

http://www.ss.ca.gov/elections/elections_fraud.htm

Voting Rights Act of 1965 – Section 203:

http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm#coverage

The United Spinal Association, a national veterans service and disability rights organization, has produced a booklet entitled *Disability Etiquette*. This booklet was designed to help its readers in becoming more aware of what is appropriate conduct when interacting with a person with a disability:

<http://www.unitedspinal.org/pdf/DisabilityEtiquette.pdf>